

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Thursday, May 12, 2004, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Jon Carlson, Eugene Carroll, Gerry Krieser, Roger Larson, Dan Marvin, Melinda Pearson, Lynn Sunderman, Mary Bills-Strand and Tommy Taylor. Marvin Krout, Ray Hill, Steve Henrichsen, Mike DeKalb, Brian Will, Becky Horner, Tom Cajka, Greg Czaplewski, Derek Miller, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held April 28, 2004. Motion for approval made by Krieser, seconded by Carroll and carried 8-0: Carlson, Carroll, Krieser, Larson, Pearson, Sunderman, Bills-Strand and Taylor voting 'yes'; Marvin abstaining.

CONSENT AGENDA

PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION:

May 12, 2004

Members present: Carlson, Carroll, Larson, Marvin, Pearson, Sunderman, Bills-Strand and Taylor (Krieser declaring a conflict of interest).

The Consent Agenda consisted of the following items: **USE PERMIT NO. 123B; SPECIAL PERMIT NO. 1726B, WEST PARK COMMUNITY UNIT PLAN; PRELIMINARY PLAT NO. 01012, WEST PARK 2ND ADDITION; SPECIAL PERMIT NO. 1870A, STEVENS CREEK RIDGE COMMUNITY UNIT PLAN; PRELIMINARY PLAT NO. 04009, STEVENS CREEK RIDGE 1ST ADDITION; COMPREHENSIVE PLAN CONFORMANCE NO. 04001 and STREET AND ALLEY VACATION NO. 04003.**

Item No. 1.2a, Special Permit No. 1726B; Item No. 1.2b, Preliminary Plat No. 01012; and Item No. 1.4, Comprehensive Plan Conformance No. 04001 were removed from the Consent Agenda and scheduled for separate public hearing.

Larson moved to approve the remaining Consent Agenda, seconded by Carroll and carried 8-0: Carlson, Carroll, Larson, Marvin, Pearson, Sunderman, Bills-Strand and Taylor voting 'yes'; Krieser declaring a conflict of interest.

NOTE: This is final action on Preliminary Plat No. 01012, West Park 2nd Addition, and Preliminary Plat No. 04009, Stevens Creek Ridge 1st Addition, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**SPECIAL PERMIT NO. 1726B,
AMENDMENT TO THE WEST PARK COMMUNITY UNIT PLAN
and
PRELIMINARY PLAT NO. 01012,
WEST PARK 2ND ADDITION,
ON PROPERTY GENERALLY LOCATED
AT S.W. 15TH COURT AND WEST "A" STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:**

May 12, 2004

Members present: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand.

Staff recommendation: Conditional approval.

Ex Parte Communications: None.

These applications were removed from the Consent Agenda due to a letter received in opposition.

Tom Cajka of Planning staff submitted the letter from Richard Mackey who lives within the development. He is not opposed to the general concept but has specific concerns that the waiver for turnaround not be granted due to lack of guest parking. He is also concerned that the street lights have never been installed.

Proponents

1. Brian Carstens appeared on behalf of the developer, **West Park LLC**. This expansion adds six dwelling units to the community unit plan that was approved 4 years ago. With regard to the letter from Mr. Mackey, Carstens advised that the developer is going to get the street lights installed immediately. As far as the turnaround waiver, if they did put a turnaround at the end of West B Court, it would impact more wetlands and would require additional fill. With regard to parking, Carstens stated that there is agreement with the homeowners association to use the day care parking lot to the east when the day care is closed and on weekends.

Opposition

1. Mika Pearson, 1641 W. B Street, testified in opposition. She has serious concerns about the townhouses and the street that is to be connected from West B Court to West B Street because this is in the 100-year floodplain and the townhome owners will have some serious flood problems. She has lived there for 25 years and she has seen some serious flooding in these areas. Her house is just on the very edge of the wetlands and they have had problems with water being right at their back door and their front garage door. People just two blocks away have had to sandbag. She is concerned about the builders coming in and building these townhouses and taking this land that should be absorbing water, and selling the townhomes to people that will eventually have flood problems. They are taking valuable land that is supposed to be holding and absorbing that water. She believes that several years ago, the developers were told no because of the floodplain.

2. Verna Pearson, 1641 West B, testified in opposition. She has lived here all her life. Her parents also lived here all of their lives and her parents own this land. This land is not only in the 100-year floodplain but also designated wetlands. Her back yard is in the floodplain. If there is over a 5 inch rain, they are sandbagging because it goes into their garage. Four years ago, it was determined that this was wetlands and that it could not be built upon. Most of the culverts are now blocked by silt and dirt; the dirt is also coming down and filling in the other lowlands designated as 100-year floodplain. She has very serious concerns about the water drainage. As far as the connection between West B Court and West B Street, she is firmly against it. She owns the land on both sides of West B Street and that area is landlocked. There is no way she would anticipate a street going through there at this time. With regard to the 100-year floodplain, this area used to flood all of the time when she was a child. She is in opposition to any kind of development on this property. She showed a map she got off the internet showing the wetland/floodplain.

Staff questions

Marvin noted that there are going to be new floodplain standards and he wondered how this development would be impacted if those standards were applied inside the city limits. Ray Hill of Planning staff explained that the staff has not had opportunity to determine whether this development would meet the new standards or not. However, there is nothing that prevents building in the 100-year floodplain as long as the development complies with the regulations about storage and raising the elevation of the dwellings above the 100-year floodplain.

Melinda Pearson referred to the map shown by Verna Pearson. In what circumstance would we allow development in the wetlands? Tom Cajka advised that the developer has mitigated the wetlands and they have an approved 404 permit from the Army Corps of Engineers.

Pearson thought that this might be the classic case where if they raised the grade for the new development, it actually potentially causes additional flooding to the existing lots just to the

west (Fairview Heights). Dennis Bartels of Public Works & Utilities stated that potentially filling a floodplain could incrementally raise the total floodplain. However, without doing a study, it is not possible to say that to 100% certainty. Under the new regulations, calculations are required to see what impact or what increment the development may raise the floodplain. Under the present floodplain regulations, fill was allowed if the units were elevated 1' above the 100-year floodplain. Pearson understands that it potentially could raise it but we do not know because there has not been a study. Bartels confirmed that there was no study required on this development. However, in this area where it is on the fringe, he estimates that it would have a minimal effect. But, Pearson has a concern about there being houses adjacent to this property as opposed to a field. Bartels does not believe one can make a blanket statement about what impact it has on the floodplain. In this area the wide floodplain is mostly backwater from the coincidental flooding of the creek. It gets to be site specific to provide a definite answer as to whether filling the floodplain would have an impact. It is Bartels' opinion that any effect on the 100-year floodplain with three units would be minimal. This area has had some flooding problems from drainage, but the previous bond issue identified building some storm sewer along West A Street that will be under construction later this year and next year to alleviate flooding from the local drainage. The problems experienced by the houses to the west is more of a localized problem as opposed to a problem created by water getting out of the banks of Salt Creek.

Carlson inquired about what Public Works has looked at in terms of the grading plan to assure that this project will not cause water to move onto those housing sites. Bartels stated that he reviewed the grading plan and did not believe it would cause a problem because of the upstream drainage area. He was looking at the localized upstream drainage area in reviewing the plat.

Pearson asked for confirmation as to the number of units. Cajka advised that there are actually 13 residential units – the other 10 units are for a conversion plan if the day care goes away. They are asking for an additional 6 units at the end, which are the closest to Fairview Heights and in the wetland area.

Bills-Strand inquired as to how much of the six units are in the wetlands. Cajka believes that all of Lot 10 and Lot 11 and the street are in the wetlands. The mitigation is taking place on the southwest corner west of Lot 8.

Bills-Strand inquired about the number of times mitigation has been allowed in the past. Cajka did not know. Bills-Strand believes it has been common.

Response by the Applicant

Carstens clarified that the developer did request not to connect West B Court to this subdivision.

Carstens showed the wetland mitigation plan which was approved by the Corps. They are mitigating at 1.5 times. This was approved several years ago and it has been resissued. The Corps reviewed it again and revived it.

Carstens advised that they will be hauling in 730 yards of fill dirt, so it is not a large quantity.

Carstens agreed that flooding in the area is localized. Some of those houses were built many years ago and were built low. The units already constructed by this developer have been removed from the floodplain by letter of map revision, in addition to the day care. He anticipates doing the same thing with the new units being certified to be 1' above the 100-year elevation.

Pearson thinks the water will drain into the neighbors' yards. Carstens submitted that the water will drain north. The front drains towards the private roadway and the rear drains towards A Street, which is heading east. The water is moving from west to east. The surface water from this development does not run towards Fairview Heights.

Carlson suggested that the purpose of the enhancement to the wetlands is to enable it to store water. Carstens concurred, adding that they are improving the drainage situation going north and east through their property.

Carroll inquired whether there was any mitigation on the first plat. Carstens stated that there was not because they stayed out of the wetland area.

Bartels reiterated that Public Works was satisfied with the grading plan and comfortable that the surface drainage from these lots would not run back to the west. It is presently lower and the mitigation probably lowers it further. Public Works was comfortable that the water from these townhouses would drain to the north. The houses to the west from S.W. 17th Street to this general area drain from west to east. If the water gets deep enough in the ditch, he acknowledged that it has gone between the houses. West B is approximately the low area behind those houses so there is water draining east to west. That is part of the problem we are trying to minimize with the storm sewer project in West A Street.

SPECIAL PERMIT NO. 1726B

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 12, 2004

Sunderman moved to approve the staff recommendation of conditional approval, seconded by Larson.

Pearson stated that any development inside of a wetland should be avoided and she believes this has been an ongoing discussion. The floodplain is one thing, but a wetland is another thing altogether and she will vote against this proposal.

Bills-Strand stated that she will vote for approval because mitigation has been allowed in the past and she is trusting the staff's recommendation that the grading will be done properly.

Motion for conditional approval carried 8-1: Krieser, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'; Pearson voting 'no'. This is a recommendation to the City Council.

PRELIMINARY PLAT NO. 01020

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 12, 2004

Sunderman moved to approve the staff recommendation of conditional approval, seconded by Larson and carried 8-1: Krieser, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'; Pearson voting 'no'. This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

COMPREHENSIVE PLAN CONFORMANCE NO. 04001,

"FY 2004 ACTION PLAN: ONE YEAR USE OF FUNDS FOR HOUSING AND URBAN DEVELOPMENT (HUD) ENTITLEMENT PROGRAMS."

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 12, 2004

Members present: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand.

Staff Recommendation: A finding of conformance with the Comprehensive Plan.

Ex Parte Communications: Marvin indicated that he had posed some questions to Urban Development, which he will also ask today.

This application was removed from the Consent Agenda at the request of Commissioner Marvin.

Marvin referred to the *"Proposed Program Area Budget and Leveraged Resources"* table where it lists "Neighborhood Revitalization (i.e., targeted public and infrastructure improvements" leveraged resources at \$39,966,600. What is the purpose and derivation of those funds? Wynn Hjermstad of Urban Development explained that almost all of that is private. The purpose is to explain to the community how we are going to spend the federal dollars that the city receives. The majority of the high dollar projects are leveraged in downtown redevelopment. The local source of funds is TIF, but HUD wants us to show all of the funding and our estimate of what kind it is and how much.

Marvin then referred to page II-1, "*Performance Measurement Systems*" and asked staff to explain some of the new performance measures. Hjermstad stated, "we're not there yet". In the next fiscal year, that is one of the things that Urban Development will be doing because HUD is making it a requirement. Primarily, Urban Development has focused on "outputs" where goals and strategies are identified for rehabilitation of houses or replacement of sidewalks, alleys, etc. HUD now wants them to look at outputs and "outcomes". Outcomes involve the impact on the rest of the neighborhood. Beginning September 1st, Urban Development will be developing a system to measure outcomes in their new consolidated plan process.

Marvin referred to page III-3 and asked for an explanation of the home buying training program. Steve Werthmann of Urban Development stated that the home buyer training is only a portion of what the operational budget supports. The staff of Neighborhoods, Inc. also administers the First Home Program. The money is used for downpayment assistance and for rehab. Home Buyer Training is also used by the staff to work with approximately 60 buyers of those homes. Those are the 60 buyers that come out of that 180 that are trained. The operational support is used for several other programs. The Troubled Property Program on page III-5 is the same thing where we show how much money is spent on acquisition and rehab, but that is also administered by Neighborhoods, Inc. and included in the operational budget.

Marvin referred to the bottom of page III-5 which talks about a goal of nine units for Habitat for Humanity. How is this achieved? Werthmann explained that the amount of money listed is just all the possible funding sources for a project in which Habitat would be involved. \$100,000 is the amount allotted for purchasing the lots. Habitat has had difficulties acquiring lots in the past, but thanks to the assistance from a lot of the departments and special agencies, and especially Steve Henrichsen, because he has made special effort to help Habitat locate vacant lots. They have found 600 potential vacant lots that are available in town and they hope to find a few lots that can be used. Five of the nine units will be supplied by Urban Development through the surplus process.

Marvin then referred to page V-2 which lists a budget of \$250,000 for Lincoln Partnership for Economic Development (LPED). In terms of reassessing outcomes, Marvin wondered whether this is an area that would be covered. Hjermstad noted that early on in the action plan, it explains that when looking at community development, HUD requires that they look at it city-wide and include what Urban Development and other city departments and agencies and the private sector will do. Urban Development is not involved in the direct funding of LPED. Since those are other city funds, it would not fall under that same evaluation system.

There was no other public testimony.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 12, 2004

Carlson moved to find the proposed Action Plan to be in conformance with the Comprehensive Plan, seconded by Carroll.

Marvin believes this is very important. There are some housing shortages. Reorienting the program to go to a standard to better address outcome is good.

Bills-Strand commented that Urban Development does a lot to work closely with a lot of entities in the community to make things happen.

Motion carried 9-0: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

PRELIMINARY PLAT NO. 04005,
BURLINGTON NORTHERN INDUSTRIAL CENTER,
ON PROPERTY GENERALLY LOCATED
AT NORTH 63RD STREET AND FLETCHER AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 12, 2004

Members present: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand.

Staff Recommendation: Conditional approval.

Ex Parte Communications: None.

Proponents

1. **Tim Aschoff**, testified on behalf of the applicant, **LRC**, and provided a history of the parcel. In 1982, a preliminary plat was approved by the Burlington Northern Railroad. Burlington Northern spent a large amount of money developing the property, but did not fully develop it. They did do the grading, including the storm drainage, the storm sewer, some sanitary sewer and some public water lines. After they did that work, things were put on hold, and in 1989, LRC purchased the property and at that time developed a warehouse and distribution center. LRC now has the opportunity for a couple of Lincoln businesses to expand into this area and are requesting this preliminary plat. It is essentially the same as that approved in 1982; however, they are requesting the waivers since some of the standards have changed since that time.

Aschoff pointed out that the staff has recommended approval of three of the five waivers. This is an industrial area. There are no foot traffic sidewalks in this area generally, and the lots will

be one acre or larger. North 70th Street is designated as an arterial street and the staff is requiring the sidewalks. Aschoff indicated that they have agreed with staff that in lieu of the sidewalk waiver, they would agree to make cash payment to the city for the sidewalks to be constructed in the future.

Aschoff acknowledged that the staff is also recommending denial of the block length waiver. They have spoken with both Public Works and Planning staff and have come to agreement that LRC will plat N. 67th Street running north to an adjacent undeveloped piece of property, which is largely in the floodplain and has wetlands so it is unlikely to be developed. They have agreed with staff to plat the street but that they would not be required to build it until such time as the property to the north is developed.

Aschoff advised that these agreements with staff now change the waiver requests and suggested that the Commission defer this application for two weeks. Tom Cajka of Planning staff explained that the waiver of block length was for the north side of McCormick Drive between 63rd and 70th Streets. They are agreeing to extend the street so that they won't need the waiver; however, they will be asking that the street not have to be constructed until other development occurs to the north. The subdivision regulations state that after the final plat is approved, the street must be installed in two years. The staff will agree to delay construction of the street but will ask that they escrow the money. This is a waiver to the subdivision ordinance and would require readvertising and continued public hearing in two weeks.

There was no testimony in opposition.

Carlson moved to defer two weeks, with continued public hearing and action on May 26, 2004, seconded by Marvin and carried 9-0: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'.

WAIVER NO. 04007,
TO WAIVE SIDEWALKS, STREET TREES,
STREET IMPROVEMENTS, AND
ADDITIONAL RIGHT-OF-WAY,
ON PROPERTY GENERALLY LOCATED
AT N. 48TH STREET AND SUPERIOR STREET.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 12, 2004

Members present: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand.

Staff Recommendation: Approval of the waiver of street improvements; denial of the waiver of street trees, right-of-way and sidewalks.

Ex Parte Communications: None.

Proponents

1. **Duane Wenzl**, owner of **Wenzl Contracting**, presented the waiver request. This property, which was previously a farmstead, was developed in 1974. The developer put in over 80,000 yards of fill so that it would be out of the floodplain and Wenzl has continued doing business at this location. He is now going into semi-retirement and has sold part of the property to Stiefer Bros. In support of the waiver of dedication of additional right-of-way and street improvements, Wenzl stated that the road carries very little traffic. Doris Bair ball park was constructed in 1988, the traffic to that facility flowing on weekends or after hours. There is hardly any traffic on the road anymore. He still has trees on his property. The money should be used somewhere else.

2. **Dale Stiefer, Stiefer Bros. Construction**, 4550 N. 48th Street, testified in support. Every garbage hauler, every contractor and private owners up and down N. 48th used this road in going to the landfill. However, today, there is a transfer station and there is very little traffic. He does not know why this street would be widened. He believes that almost every property owner will protest the taking of their property to widen the street. He does not know where this street is going to go. It certainly will not go to the landfill, but maybe to the Doris Bair Park. He pointed out that the sidewalk would be required to be constructed within four years; however, he is doubtful that the new street will be put in within four years so there will not be grades so that the sidewalks can be put in properly. If there is a sidewalk district passed to put in the sidewalks, he will comply. He does not believe the bond should be required at this time.

Bills-Strand inquired whether there are any sidewalks along 48th Street. Stiefer stated that there are none. There are some trees on the Wenzl property. Stiefer had one tree that died. From his place to the south, there is no room for the street trees. It's all parking. When all of this property was developed, parking was allowed to be placed within 2.5 feet of the property line.

There was no testimony in opposition.

Marvin agreed that if the sidewalk is required to be constructed, it might have to be torn out in four years for the street widening. When is 48th Street scheduled to be widened? Tom Cajka of Planning staff advised that the widening of 48th Street is in the CIP for 2008-09 or later. Planning suggests that in lieu of waiving the sidewalk and street trees, the developer submit to the city a cash equivalent instead of an escrow, and then at the time the improvements are made, the city would install the sidewalk and street trees. North 48th Street

is a two-lane, asphalt rural cross-section. It is proposed to go to four lanes up to Doris Bair Circle. The Comprehensive Plan and CIP identify it as four lanes plus turn lanes, with 100' of total right-of-way.

Larson does not understand why that would be four lanes. Does it lead to anything? Dennis Bartels of Public Works advised that this section of North 48th Street is at the tail end of the program. The project is identified from 48th and Fremont to this point. It is difficult to say how wide it would be. The main intention was four lane from Fremont to Superior, and this area would be at the tail end of the project and there would probably be no need to put the four lanes all the way to Doris Bair Circle. He does not know how far they might take the four lanes north.

Pearson inquired whether there is a mechanism to say that instead of waiving the sidewalks and street trees or bonding, that the applicant will agree to put them in when the street goes in. She does not believe they should have to put the money up for the sidewalks today. Cajka believes that might be difficult because the property ownership could change and the person doing this development may no longer be involved. Rick Peo of City Law Department believes there might be potential to do something like that. Then when the final plat comes forward, those conditions would have to be filed with the property. In effect, the Planning Commission would be waiving the requirement that the sidewalks be built and waiving the requirement that there be a guarantee that it be built, which creates an enforcement problem and no way to collect the money. The City Council could order sidewalk construction at any time. Deferral of the sidewalk installation without being bonded would be a unique situation.

Bills-Strand wondered how to handle the situation when the concrete goes right up to the property line. What if there isn't room for street trees? Peo noted that street trees are frequently waived, or sometimes the street tree is put on private property. There are some options.

Carlson believes there are some trees on the property. Maybe Parks should look at the existing inventory to see if they are sufficient for street trees. Cajka acknowledged that there are trees but he is not sure they would be classified as street trees. At this time, Parks has said that they do not oppose the cash payment to put the street trees in at a later time. Cajka pointed out that over the last ten years, there were three other subdivisions done in this area north and south, and all three of those subdivisions were required to escrow for sidewalks and street trees.

Response by the Applicant

Stiefer stated that he will plant the trees on his property. His neighbors to the south don't have any place to put trees. There are trees on the property to the north. He would rather put in his own sidewalk rather than have the city put it in. He does not want to put up the bond.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 12, 2004

Larson moved to approve the applicant's request, except street trees, seconded by Pearson.

Wenzl came forward and asked the Commissioners to drive the property before voting on this application.

Carlson stated that he is opposed to the motion. The waiver of the street improvements is acceptable, but he thinks the sidewalks are important. This is an area in transition. He thinks it is a mistake to think this area is going to stay the way it is. He would support approving the waiver of street improvements, but not the sidewalks and street trees.

Carroll would not want to do away with the right-of-way. The city should take the right-of-way. It is there for the city to use if they need it. The right-of-way waiver should be denied. He agrees that the sidewalks and street trees should be required because we have required them for other plats in the area.

Bills-Strand indicated that she has driven on this road a lot of times to Doris Bair Park. It is a county road and there isn't a lot of traffic. It probably won't have street improvements for quite awhile. She does not have a problem with street trees. She agrees to have the right-of-way and they should agree to install the sidewalks at their cost when the street improvements are done.

Motion to approve applicant's request, except for street trees failed 1-8: Larson voting 'yes'; Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Marvin and Bills-Strand voting 'no'. Carlson moved to approve the staff recommendation, which approves the waiver of street improvements and denies the waiver of street trees, sidewalks and additional right-of-way, seconded by Carroll.

Bills-Strand moved to amend such that the owner agrees to install sidewalks when North 48th Street is widened, seconded by Marvin.

Peo inquired whether this motion requires the escrow for the sidewalks. If you are approving the deferral of sidewalks rather than a waiver, it is okay to defer until the street is constructed, but we need to know whether to require the escrow. Bills-Strand does not want to require the escrow at this time in that the applicant agrees to pay to install the sidewalks at his cost at that time.

Motion to amend carried 8-1: Krieser, Pearson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'; Carlson voting 'no'.

Main motion, as amended, carried 9-0: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'. The Planning Commission recommendation is to deny the waiver of street trees; approve the waiver of street improvements; deny the waiver of the dedication of additional right-of-way; and conditional approval of the waiver of sidewalks, such that the sidewalks shall be installed by the owner, at the owner's expense, when North 48th Street is improved by the City. No bond is required. This is a recommendation to the City Council.

*** Break ***

ANNEXATION NO. 04004,
CHANGE OF ZONE NO. 04021
FROM AG AGRICULTURAL AND AGR AGRICULTURAL RESIDENTIAL
TO R-3 RESIDENTIAL,
and
SPECIAL PERMIT NO. 1762B,
AMENDMENT TO THE VINTAGE HEIGHTS COMMUNITY UNIT PLAN,
ON PROPERTY GENERALLY LOCATED
AT S. 98TH STREET AND OLD CHENEY ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 12, 2004

Members present: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand.

Staff Recommendation: Approval of the annexation and change of zone, and conditional approval of the community unit plan amendment.

Ex Parte Communications: None.

Tom Cajka of Planning staff submitted a letter from a property owner west of Blackstone Drive who is opposed if this development is going to be similar to the Allegrini Terrace townhomes which are south along Pine Lake Road. He also submitted a letter from Mike James, with concerns about the density and type of development proposed west of Blackstone and traffic.

Proponents

1. **Brian Corzine**, 2200 Fletcher Avenue, presented the application on behalf of the developer. This is a request to amend the community unit plan for Vintage Heights. In addition the applicant is requesting annexation and a change of zone on property being added to the community unit plan in the northwest corner and on the west edge.

Corzine stated that the developer is in general agreement with the Planning staff recommendation. In regard to the pump station, Corzine requested amendment to Condition #1.2.12 which does not allow final plats on the lots that cannot be serviced by gravity sanitary sewer until such time that gravity sanitary sewer is available, "or until a policy on pump stations is either developed or the pump station is allowed". Staff is currently working on a policy for small pump stations. The developer is willing to show these lots as nonbuildable until they can be served by sanitary sewer or a pump station is allowed.

Corzine further noted that when the previous annexation for Vintage Heights was approved, it called for the improvement of 98th Street to a 2-lane rural asphalt section, to which the applicant agreed. Public Works has now asked for turn lanes along Pine Lake Road and Old Cheney Road. The developer is opposed because the turn lanes were not in the original agreement. This development has exits to both Old Cheney Road and Pine Lake Road.

With regard to the temporary turnaround on private road waiver, Corzine stated that the developer is in agreement with the Public Works recommendation for a 30' radius cul-de-sac.

The developer has also agreed to amend the street names.

Pearson inquired about a connection to the bike path along Antelope Creek. Corzine stated that the exact location has never been pinned down so it was omitted. However, the staff report requests that the access be shown and the developer will comply. They had always intended to include that path. He believes that it is an at-grade crossing so there will not be a bridge.

Cajka further responded, stating that the bike trail has only been a general location and it is up to Parks to come up with the final design and the exact location. He agreed that it would probably be an at-grade crossing.

Bills-Strand inquired whether the townhouse area is going to have a common area that an association will be assessed to maintain. Corzine advised that there are outlots shown in the center of the development which will be a common area of grass and trees. There is a mini-park site that will be accessed through a trail system. It will be part of Vintage Heights.

Pearson requested to see the location of the boundary of the wetlands. Corzine does not believe it is shown on any of the maps. He did show the channel and the location of the townhouses on the agenda drawing. None of the lots encroach upon the wetlands so there will be no impact on the wetlands. The developer has not requested nor has any plans to get a 404 permit to do any fill in the wetlands.

Carlson confirmed with the applicant that for the townhome area, there is a connection to the east on Foxtail, but what about a connection to the west? Corzine stated that the developer

does not currently own the property to the west. It is their intention to connect the road out to 84th Street; however, it was not shown on the plan because that owner is not part of the CUP. There will also be a connection to the south.

Opposition

1. Bob McLean, 6031 So. 88th Street, testified in opposition. He and his wife moved here 4 ½ years ago looking for a nice home and nice development. He did the due diligence and thought there would be 57 townhomes. He also bought the lot next door to his home. While making that purchase, he also did his due diligence and inquired as to what is planned behind his property. Thus, he was very surprised about 2 months ago to find out that instead of 57 townhomes, there are now 117 planned, which is double the density. McLean submitted a petition bearing 10 signatures, two of which were not aware that the density was doubling. He suggested that the letter sent to the homeowners was not clear that the density was being doubled. He does not understand how you can double the density without telling people about it. There should only be 57 townhomes. He does not see any plan for a road out to 84th. He believes there should at least be a plan showing the connection to 84th Street. If they cannot get the double density stopped, at a bare minimum, the developer should put the connection to 84th before any construction begins. There is a safety concern. He finds it hard to believe that some of those lots are not in the floodplain. He only spent an hour and got 10 signatures on the petition in opposition to the density. In addition, if the bike path is on the east side, it is going to go right over his property.

2. Terry Roberts, 6010 S. 91st, President of **Vintage Heights Homeowners Assn.**, testified in opposition. Bob Lewis was asked to attend their April 6th annual meeting to explain some of these issues, but no one attended. The 57 units are already approved and we don't have a problem with that. The entrance on Pine Lake to Vintage Heights is currently closed for road construction. Everyone comes in from Old Cheney at 93rd or on 88th Street. If construction were to begin, that is where the construction vehicles would be coming in.

Roberts noted that the staff report suggests limiting the development to 40 dwelling units to reduce the risk of not providing emergency service (Staff Analysis #8). Roberts stated that there are roads that are being constructed right now. She requested that the original 57 units remain with no increase in density; that no development would occur at this time until there is another road in place. The Homeowners Association would prefer that the staff Analysis #8 be required and that a road be put in as part of this application or to deny the additional density. The houses running along 88th are \$300,000+ houses, as well as those along Blackstone Road.

Carlson pointed out that there is a condition of approval that says no more than 40 dwelling units shall be built in Blocks 36-40 until Foxtail Drive is built to South 84th Street or road connection to another street system to the south. Roberts believes that this still approves the

117 units, to which the Homeowners Association objects. However, if the 117 are approved, then the road must be required prior to beginning construction of the 40 units. There is a concern that there is no plan in writing for the road at this time.

Staff questions

Carlson asked for staff response regarding the 40 units. Cajka explained that the staff is requiring that until there is a second access either at 84th Street or another access to the south, they can only construct 40 dwelling units. There is another development south of this coming forward in two weeks.

Carlson believes the developer is transferring units to keep the total CUP development about the same. Cajka agreed. The units are being transferred from the northwest corner of 98th and Pine Lake Road, which was approved as an apartment complex. The overall density for the whole community unit plan is only increasing by three units.

Carlson commented philosophically, that normally we like to see the higher density closer to the arterial.

Dennis Bartels of Public Works addressed the requirement for turn lanes. At the time the original Vintage Heights was approved, Public Works was not routinely asking for the turn lanes. 84th Street is now being paved to urban cross-section; Old Cheney is rural cross-section; Pine Lake is rural cross-section; and 98th is gravel. In analogous situations in other plats in the last couple of years, Public Works has agreed to waive the requirement to have a curb and gutter street abutting the subdivision, so we have asked for temporary widening of the existing asphalt section where they are intersecting the county section arterial street. It is Public Works' recommendation, but he could not point to anything in the standards for the requirement. It has been done in other developments. Carlson believes it also requires participation in the cost of the arterial street construction. Bartels stated, "not directly". These lots would be subject to impact fees but they are not making any cash contributions to the permanent pavement.

Carroll inquired about ownership of the property for the change of zone. Cajka stated that the staff would want the change in ownership to be finalized prior to scheduling this on the City Council agenda. There is a letter from the church on page 189 that indicates they are working with the developer and moving forward with sale of that property.

Carroll inquired whether outlots is acceptable for those lots that do not have sewer now. Cajka explained that the site plan will not change; however, those lots will have a note on the plan saying they cannot be final platted until it can be sewer. The applicant is requesting to change the language of that note.

With regard to the proposed amendment to Condition #1.2.12, Dennis Bartels stated that Public Works we can live with the language that is proposed. In Public Works' initial review, they were objecting to the use of the pump station. The policy has not been finalized. If we end up with a policy that this development can meet, the lots can be platted. If not, they will have to wait for the gravity sewer. Bartels is agreeable to wait until the policy is established and then review this request in light of that policy. It is debatable at this point in time whether Public Works would recommend they be sewer based on the draft policy. Cajka concurred that even after the policy is established, it is possible that it may not apply here. There will be criteria that will have to be met. If they cannot meet that criteria, the staff would still recommend that they not be allowed to use a lift station.

Bills-Strand inquired as to when this property would be ready to built and occupied. Bartels stated that as soon as this community unit plan is approved, they would have the authority to begin grading and start installing sewer and water. Realistically, it would most likely be next year at this time before occupancy would begin. There will be another construction season before 84th Street is done.

Pearson noted the conditions requiring the applicant to identify the wetland boundaries. What happens when some of the property is in the middle of the wetlands and floodplain? She believes the lots straddle the creek and she is curious about it. Bartels acknowledged that Public Works was questioning the same thing. Public Works did not have enough information to evaluate it and that is a question that needs to be answered in the drainage study. Public Works assumed the flood elevation did not account for the culvert across Foxtail and the conditions of approval were written to require the information. There is not a FEMA designated floodplain along Antelope Creek east of 84th Street. Public Works will be reviewing the additional information before it goes on to the City Council. Cajka confirmed that the applicant must provide the information prior to being scheduled on City Council.

Response by the Applicant

With regard to the wetlands, Corzine advised that at the time the 57 units were shown in the townhome area with Foxtail Drive, there was a drainage study done which established the 100-year flood limits. That drainage study took into account the proposed development conditions. The developer has agreed to re-evaluate that study to make sure that none of the assumptions are no longer valid. If they are, they will update the study.

With regard to access to 84th Street, Corzine indicated that originally, with the previous community unit plan, there were 57 units that they were going to build and they did not show access to 84th. The developer has agreed to build no more than 40 units prior to completing that access to 84th or to the future subdivision to the south. Notes will be added to the plan accordingly.

Bills-Strand noted that one of the letters discusses trees that have been torn down. Corzine was not sure what trees to which the letter refers. The grading plan did not show tearing those trees down. The trees adjacent to the bank are still there.

With regard to the issue of property ownership of the amended area to the west, Corzine advised that in previous discussions with Planning, it was agreed that they would go through the deeding process to achieve the property for the area not included in the current CUP. The reason they did not do that for Foxtail Drive right away is that the connection on 84th was not totally established so they were unable to tell the owner exactly what property they wanted to buy. With the improvements of 84th and leaving a stub street on Foxtail, those plans are more finalized so the developer is in negotiations with the church to buy the property in order to connect the road.

Since the developer did not attend the Vintage Heights Homeowner Association meeting, Pearson asked Corzine to explain how the development went from 57 to 117 units. Corzine suggested that the demand for different types of housing changes and when Vintage Heights was originally planned, the demands and the requests for types of housing may have been different; however, he is an engineer and is speculating. Corzine stated that the entire community unit plan complies with the Comprehensive Plan in that the developer is providing mixed use type living within the community unit plan. Hampton Development is not able to be here today.

Jason Thiellen of EDC offered that at the time that the original Vintage Heights Addition concept plan was going through, they only thought they needed 57 units. With the situation of lots in the city, they believe they need more lots in this area in order to recoup some expenses. This area is separate from the single family property owners. There is a buffer between the townhomes and the single family homes of no less than 170' up to 300' or more. Higher density does not necessarily mean less value. It is a smaller, more affordable home. It will not have any effect on the single family units adjacent to this property. The simple fact is that they needed more units. This is in conformance with the Comprehensive Plan to encourage different housing types and choices, including affordable housing, through each neighborhood and increasing diverse ownership.

Pearson urged that it would behoove the developer to understand that communication is essential.

ANNEXATION NO.04044**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

May 12, 2004

Carlson moved approval, seconded by Sunderman and carried 9-0: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 04021

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 12, 2004

Carlson moved approval, seconded by Larson and carried 9-0: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

SPECIAL PERMIT NO. 1762B

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 12, 2004

Carlson moved to approve the staff recommendation of conditional approval, seconded by Marvin.

Larson moved to amend Condition #1.2.12: Add a note to the General Site Notes on Sheet 1 & 2 that states: All lots that cannot be serviced by gravity sanitary sewer shall not be final platted until such time that gravity sanitary sewer is available, or the city adopts a policy that allows this pump station. ~~Pump stations shall not be used to service these lots.~~, seconded by Carroll.

Carlson stated that he is pretty leery of pump stations so he wanted to vote on the amendment separately.

Motion to amend carried 6-3: Krieser, Sunderman, Carroll, Taylor, Larson, and Bills-Strand voting 'yes'; Carlson, Pearson and Marvin voting 'no'.

Main motion, as amended, carried 8-1: Krieser, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'; Pearson voting 'no'.

ANNEXATION NO. 04006,

CHANGE OF ZONE NO. 04010,

FROM AG AGRICULTURAL TO R-1 RESIDENTIAL,

and

PRELIMINARY PLAT NO. 04006,

BRANDT HEIGHTS 1ST ADDITION,

ON PROPERTY GENERALLY LOCATED

AT SOUTH 84TH STREET AND SOUTH STREET.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 12, 2004

Members present: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand.

Staff Recommendation: Approval of the annexation and change of zone, and conditional approval of the preliminary plat.

Ex Parte Communications: None.

Proponents

1. Paula Dicero appeared on behalf of **Associated Engineering and Ron Tonniges**, who is proposing this development east of 84th Street adjacent to South Street for 11 single family homes and 1 outlot. The developer is requesting that the outlot remain agricultural and outside of the city limits. Dicero agreed with the staff recommendation and conditions of approval. They will be required to come up with a proposed future concept plan and she will be working with the Planning Department on that issue. The developer has no intent to develop that property at this time and does wish to have it remain outside the city limits and as agricultural zoning.

There was no testimony in opposition.

Staff questions

Carlson clarified that the outlot is not proposed for annexation. Tom Cajka of Planning staff concurred. They are leaving the outlot of 20 acres zoned AG and outside the city limits.

ANNEXATION NO. 04006

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 12, 2004

Pearson moved approval, seconded by Carlson and carried 9-0: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 04010

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 12, 2004

Pearson moved approval, seconded by Carlson and carried 9-0: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

PRELIMINARY PLAT NO. 04006

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 12, 2004

Carlson moved approval of the staff recommendation of conditional approval, seconded by Carroll and carried 9-0: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin

and Bills-Strand voting 'yes'. This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

ANNEXATION NO. 04007,
CHANGE OF ZONE NO. 04009,
FROM AG AGRICULTURAL TO R-3 RESIDENTIAL,
and
PRELIMINARY PLAT NO. 04004,
BIG THOMPSON CREEK 1ST ADDITION,
ON PROPERTY GENERALLY LOCATED
AT SOUTH 56TH STREET AND YANKEE HILL ROAD.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 12, 2004

Members present: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand.

Staff Recommendation: Approval of the annexation and change of zone, and conditional approval of the preliminary plat.

Ex Parte Communications: None.

Proponents

1. DaNay Kalkowski appeared on behalf of **Ridge Development Company, Southview, Inc, and Developments Unlimited.** The original plat for Big Thompson Creek was approved in June 2003, which created 158 single family lots. The 1st Addition includes that original area and adds 53 acres of property and 178 residential lots to the south. The area originally platted has been included because the street layout is being revised in the northeast corner to accommodate the planned future school site directly to the east.

The developer met with the neighbors in March and most of their questions dealt with the city's plans for the ultimate widening of S. 56th and Yankee Hill Road. The developer is dedicating the right-of-way easements on their property to accommodate the ultimate construction of S. 56th and Yankee Hill Road. On the east side of 56th, the developer is dedicating 60' of right-of-way at the intersection with Yankee Hill Road. In addition, as you go north, the developer is granting 50' but adding on a 10' landscape and pedestrian access easement to do the sidewalk and landscaping in that additional 10'. On Yankee Hill Road, the developer is granting 70' on their side up at the intersection and then dedicating 60' as you go to the east throughout the remainder of the property. The developer is also dedicating a 10' easement for the trail to be located on the north side of Yankee Hill Road.

The developer is in agreement with the conditions of approval. While there was a substantial list of waiver requests, Kalkowski advised that at least half were previously requested and granted with the original preliminary plat.

Marvin inquired as to the kind of screening there will be along 56th Street where the houses back up to 56th Street. Kalkowski stated that they are proposing a fence screen.

Carlson referred to the landscape plan and asked for further explanation of the fence. Kalkowski explained that the fence would be to the east of the sidewalk and 10' into the property. There would be street trees and sidewalks on the west side of the fence.

Carlson commented that basically, this developer has done some great and unique things and he is confident that Campbell will do some unique and great things with the property to the north. Here are some sections of arterials in town with nothing but board fence on both sides and he is hoping this will not be the same case in these developments. Kalkowski's response was that the developer is required to provide screen along the arterial street and that is usually the screen of choice for the developers and the neighbors, and she believes that is the choice here. Carlson noted that there are some items on the Planning Commission pending list that would broaden what would be required along major streets. He urged that there is a need to look at how we could accomplish not having solid lines of fence on both sides of the street.

Pearson asked whether Ridge Development has ever heard of new urbanism. Has your client discussed it? This looks like sprawl to Pearson. There is no multi-use. It is strictly one kind, one size fits all. Did they consider anything else? Kalkowski stated that at one time the whole entire first phase was considered as apartments, but right now the market is single family lots and that is what their builders are asking for.

Marvin inquired as to the anticipated price range. Kalkowski did not know, but the lot prices are going up from what they originally started talking about. It is significantly higher now but she did not know the number.

Opposition

1. Gary Hergenrader, 5701 Yankee Hill Road, stated that he is speaking in a neutral position; however, he believes he should be in opposition because this development is going to destroy a lot of the values of his property, which he built 18 years ago. He is not in opposition because it is futile because the developer has already put hundreds of yards of fill into the property and spent hundreds of thousands of dollars to reverse the drainage to make it flow to the north so that they could utilize the sewer system. One thing that can be done has to do with Yankee Hill Road. In March, five neighbors along Yankee Hill Road sent a letter to the Mayor with copies to Public Works, Planning and the engineer in charge of this survey. The south side of Yankee Hill Road is all developed acres. If additional right-of-way is taken

on the south side, the trees will be destroyed or removed. In 1997, the county took additional right-of-way to make 100' and they promised that no more right-of-way would be needed. That is obviously not the case. Hergenrader and his neighbors are suggesting that it would be cheaper for the taxpayer if the additional right-of-way required along Yankee Hill Road be taken from the undeveloped farm land on the north side of the road rather than to take it from the south side, remove the trees and cause other property damage.

2. John Griffin, 8500 S. 56th Street, is neither for nor against the zoning, but he is against the process. The land on the west portion being changed from AG to R-3 does not actually look like it does on the map at the moment. It did look like the map just a month ago. But today, the pond in the center and the drainage going south no longer exist. This is putting the cart before the horse. This land is no longer agricultural. It has been modified and been mined and it looks like a mine reclamation project at the moment. He showed a photograph looking north from Yankee Hill Road showing the embankment of dirt along the road which has been covered with little topsoil mixed with manure. He also showed a photo looking east from 56th Street, showing the barn and shed. The only remaining natural soil is just beneath the barn. This is no longer agricultural land. Along the west side of the property along 56th Street there was a series of small trees that may have been planted four years ago by the former farmer. Two weeks ago they were all dug up and removed. Following the removal of all the soil and the mining reclamation, a sign went up for the change of zone. He believes there is a problem with the process.

Response by the Applicant

With respect to the right-of-way issue on 56th & Yankee Hill Road, Kalkowski explained that to have been one of the discussions at the neighborhood meeting. The city has changed their standard for the amount of right-of-way for major arterial roads. The developer has actually dedicated their half of the right-of-way plus the trail, and on Yankee Hill Road, the plan shows an outlot. When the city gets to the design of Yankee Hill Road and they want to shift it to the north, there is an outlot there that provides that flexibility. We don't have the same flexibility on 56th because of an LES power line. This developer has tried to put some things in place to allow some flexibility with respect to the right-of-way.

With respect to some of the grading that has occurred, Kalkowski stated that the property owners acquired the north property first and came in with the preliminary plat, and then afterwards acquired the property to the south. To address all of the sewer issues, this developer was required to change the plans and do some regrading in order to be able to finish those streets, which is what precipitated the grading ahead of time to accommodate the infrastructure that is being installed on the property to the north. This development is draining a portion of this property over the ridge because the area to the south to be sewer would sewer along with the acreages on the south side of Yankee Hill Road. In order to provide sewer, the sewer would have to come up through those acreages and it is a long way out in

the future until that sewer line is ready to come through the acreages. We do not have a capacity issue once the Beal Slough improvements are done. This development is going to extraordinary lengths to sewer and serve this. It makes sense to have the cut-off line be Yankee Hill Road.

Kalkowski also pointed out that the developer did notify the city and the neighbors at the meeting held in March that they would be out there doing some grading.

In addition, Kalkowski pointed out that there is an outlot shown along 56th and along Yankee Hill Road that will contain landscaping. The trees that have been removed have been relocated to other locations.

Carlson notes that this development has laid out the geography for making the shift to Yankee Hill Road to the north. Are you talking about a future purchase? Is it common for the city to require more from one side than the other side? Kalkowski believes it is uncommon. Rick Peo of City Law Department also believes it is uncommon for the staff to ask for more than one-half. This developer has provided opportunity for the city to pay for any extra right-of-way they would desire. He does not believe they can be required to dedicate more than their fair share. Carlson wondered about the property owners on the other side contributing to the cost. Peo was not aware of such a situation.

Carlson noted that this is not a straight preliminary plat because there are a lot of associated waivers. What would be the opportunity to talk about additional screening on the arterial side of the fencing? Peo believes that the applicant has complied with the required standards. If the city requires more than the standard, the city would have to show that this development is different from any other development. The standards have been developed and if they comply with the standards, they would be satisfying the public need. Unless the public need is demonstrating something above and beyond, he does not believe the city can ask for anything more.

Bills-Strand noted that there is a 345 pv line on the south side of Yankee Hill Road, so obviously we can't go to the south to widen it because of the huge expense of moving the pv line. She assumes it will have to be shifted to the north. Why wouldn't we take that now? Why wouldn't you take the easement now rather than pay for it later? Bartels explained that part of the difficulty is that Public Works is just getting into the design process. There are several factors to be considered as to whether or not you can move it from one side to the other. If you are going to shift any significant distance you cannot do that instantaneously. It is a difficult question to answer as to how feasible it is until we have grades and some design work done on the project. There is at least 50' of right-of-way on the south side. As part of the design

process, Public Works is going to have to look at the variables. He does not know that it is a given that the city will acquire 120' of right-of-way. He does not disagree that getting more right-of-way from the subdivision would preserve the alternative to shift it, but he hesitates to say with certainty that that is what can or will happen.

Bills-Strand recalled a subdivision along Old Cheney Road near HiMark at about 88th Street where the Commission determined that they could grant that easement if found that we needed to widen the road because they wanted to save the trees. Bartels recalls that in that situation the city was asking for the full 60' of dedication per the new standards and the developer was unwilling because the previous plat only required 50'. The easement was not granted beyond the 60'.

Larson inquired as to how much the land is raised on the south side of Yankee Hill Road. Mark Palmer of Olsson Associates stated that it is approximately 10 feet in the low areas. The back of the walkout lots are even with the road now where they were about 6 ft. below previously. They took the dirt and filled in the manmade pond used for cattle.

ANNEXATION NO. 04007

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 12, 2004

Larson moved approval, seconded by Sunderman.

Pearson believes we have a missed opportunity. Unless we, as a Commission and as a community, quit bulldozing agricultural land, trees, lakes and whatever, and putting in things that look like this, we're not going to go forward as a city. We have got to think further than that. She understands Mr. Hergenrader's feeling of futility and she is going to vote no.

Motion for approval carried 8-1: Krieser, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'; Pearson voting 'no'. This is a recommendation to the City Council.

CHANGE OF ZONE NO. 04009

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 12, 2004

Larson moved approval, seconded by Sunderman and carried 8-1: Krieser, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'; Pearson voting 'no'. This is a recommendation to the City Council.

PRELIMINARY PLAT NO. 04004

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 12, 2004

Larson moved to approve the staff recommendation of conditional approval, seconded by Krieser and carried 8-1: Krieser, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'; Pearson voting 'no'. This is final action, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

COMPREHENSIVE PLAN AMENDMENT NO. 04001
TO ADOPT THE "NORTH 48TH STREET/UNIVERSITY
PLACE PLAN: NEIGHBORHOOD REVITALIZATION &
TRANSPORTATION ANALYSIS, 2004" AS AN APPROVED
SUBAREA PLAN OF THE COMPREHENSIVE PLAN
AND TO AMEND THE LAND USE PLAN ACCORDINGLY,
GENERALLY LOCATED BETWEEN NO. 46TH STREET
AND NO. 56TH STREET FROM FRANCIS STREET TO
ADAMS STREET.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 12, 2004

Members present: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand.

Staff Recommendation: Approval, as revised on May 12, 2004.

Ex Parte Communications: None.

Proponents

1. Wynn Hjermstad (Urban Development) **and Kelly Sieckmeyer** (Public Works & Utilities), the co-project managers, appeared to answer questions and submitted a proposed amendment regarding the Nebraska Wesleyan "Campus Domain Limit". The amendment is the agreement for revised language reached between Urban Development, Nebraska Wesleyan, and the University Place Community Organization.

The other issue concerns Williams Cleaners and Sieckmeyer acknowledged that there is a need to address the access in and around Williams Cleaners. There is currently access on 48th and on Baldwin Avenue which operates as a two-way access in front of their business. With the proposed plan, attempts are being made to discourage left turns between Huntington and Madison going north. They will continue to look at redesigning that area, moving that driveway on Baldwin further to the west and possibly redesigning and working with the owner to make it one-way in front of their business. Urban Development has visited with the legal

representative for Williams Cleaners and will continue to work with them to come to some agreement and accommodation.

Hjermstad reiterated that this is a concept plan and as they move into implementation there are a lot of details that will have to be worked out. The implementation committee has been set up--they have not met yet--but they will continue to work through the detail issues.

Proponents

1. Steve Guittar, who owns property at 48th and St. Paul, testified in support. His property is at the intersection that will be closed off. He is firmly in support of this plan. The city staff, Marty Shukert, and Schemmer and Associates have all done a terrific job trying to build consensus and work through the problems. The property owners are all in favor of approving the neighborhood and adopting most of this plan. He is confident that the concerns will be able to be worked out through the implementation process.

2. John Hall, business owner on N. 48th for 20 years, testified in support. He is very much in favor of this plan. He was on the task force and the consultants have done a tremendous job. Where Adams Street is widened to 4 lanes north of 48th and Adams, it is going to cause more traffic, so he believes this plan is going to have to have the two lights and crossings so people can get back and forth between the businesses. He also commended Mary O'Shea for developing the area to make it look better.

3. Brian Watkins, president of the **University Place Business Association**, testified in support. University Place is a small town--it's Lincoln. The plan talks a lot about traffic. We want the traffic to come through reasonably, safely and get back behind the businesses and stop and shop and enjoy this wonderful piece of this city. There has been some investment but the city hasn't visited this neighborhood since 1981. The city now has a new plan and the city is going to be asked to commit and perform under this plan. Since 1981, the only thing that has happened in this neighborhood was Walgreen's and a bank was built. Watkins and the association want to see new business and excitement. The business association has voted in favor of this plan.

4. Dave Peterson, representative of the Campus Planning Office at UNL, testified in support. He complimented the consultants and staff for the planning process that was very open and welcoming. UNL, through its campus planning committees and Institute for Agricultural and Natural Resources, tried to participate in all of the working sessions. Most of the plan's recommendations which impact the UNL east campus along 48th Street and along Huntington and Leighton were already recommended in UNL's master plan for east campus. UNL therefore supports the recommendations that call for enhanced landscaping along the east campus borders and pedestrian trail around the entire perimeter of the east campus. UNL

also supports inclusion of a new east entrance to east campus from 48th at Francis Street; however, that can't happen until UNL resolves some problems internal to the campus in terms of bank erosion. They are working with the city and NRD to resolve that problem.

Peterson recalled that UNL did express concerns about a bicycle and pedestrian trail along Dead Man's Run through east campus. Their concern was essentially for security along some of the research plots. Vandalism in these plots has and continues to be a problem. However, UNL does recognize that the Comprehensive Plan and the trails plan recommend a trail on Dead Man's Run through east campus and UNL has arranged to meet with the trails committee to see if they can resolve some of UNL's concerns. In the meantime, UNL is satisfied in that their concerns have been mentioned in the plan.

Opposition

1. Dr. Charles Genrich, 6340 S. 66th, testified, stating that he is not sure he is in opposition. Overall, the redevelopment plan is a good idea. Whenever he has had concerns the consultants have been willing to work with him. He understands that some of the ideas are conceptual, but unless he speaks up now, some of those conceptual ideas could become reality. One of his concerns is the closing of St. Paul Avenue. His dental office is on St. Paul. 75 to 85% of his clients enter and leave off of 48th onto St. Paul. If St. Paul is closed, those people are going to leave off of 49th or have to take circuitous routes back to 48th Street. On a slow day, his office has 20 client visits. On a busy day they probably have 60 client visits. 49th Street has parking on both sides of the street and is really narrow and snow was not cleared well last winter. He owns the lot where they want to change the traffic flow. How is the short span from the half block of St. Paul to 49th going to get cleared of snow?

Additionally, Dr. Genrich noted that the plan proposes to put the parking up against the building and change the flow, which leaves him no chance of expansion. There are four dentists in the building, and this will limit their opportunity for expansion in the future. Does this increase the traffic and wear and tear on his lot?

Dr. Genrich suggested that if this plan is going to work, there must be a stop light at Madison. The traffic won't flow in the proper manner without a stop light at Madison.

In summary, Dr. Genrich stated that he supports the redevelopment of the University Place area.

Bills-Strand asked Dr. Genrich whether he had an alternative to propose. Dr. Genrich stated that one of the ideas was to remove the parking on St. Paul and put an island in the middle. That would still give you some type of a walkway and slow traffic down. But supposedly there

isn't enough room for this idea. Another option would be to leave St. Paul open. It would be ideal to leave the west side open and close the east side, but he also wants the street light at Madison.

Response by the Applicant

Hjermstad reiterated that they understand there are a lot of issues to be addressed and resolved in the implementation. They will continue to work with the property owners and look at future expansion opportunities.

Bills-Strand inquired whether there is some language that would give Dr. Genrich and others that assurance to continue to work with the business owners. It was pointed out that there is language in the implementation section on p. 81 of the study which says that further refinement will be required in the decision making, design and funding.

Bills-Strand inquired about the traffic light on Madison. She understands the warrant situation, but wondered whether there is any other way to require a light. Sieckmeyer stated that traffic signals must meet warrants before they are installed; however, it is anticipated that the warrants will be met. If we do a pedestrian plaza, that is also going to change traffic flow in the area and we will look at the warrants a lot sooner with those kind of improvements. Traffic lights are driven by warrants.

Pearson noted that the consultant said that the pedestrian crossing at St. Paul really only works with lights before and after it to slow down traffic. If you have a pedestrian mall going across 48th and the traffic doesn't warrant the traffic lights, doesn't that make it a dangerous pedestrian mall? Sieckmeyer responded, stating that the 48th and Huntington signal today is a pedestrian actuated signal; however, it does not conform to some of the federal standards. When we upgrade that signal, we will be looking at a fully signalized intersection and that one will be in place. With the traffic flow changes and the redevelopment, he believes the warrants will be met. Hjermstad suggested that the order in which things happen also makes a big difference.

Larson inquired about the number of traffic lights. Hjermstad stated that there are two, and then a pedestrian light.

Bills-Strand inquired about addressing the business owner's concerns about 49th and 47th and the parking and the narrowness. Sieckmeyer stated that the city continues to monitor 47th and 49th. If we would have to make changes to the parking, we could. In terms of snow removal, we do have a strategy identified that says we will continue to monitor the traffic. Page 66 of the study refers to performance monitoring at 47th and 49th.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 12, 2004

Larson moved approval, including the amended language submitted today, seconded by Carlson.

Bills-Strand believes it's a wonderful plan, but wants to make sure they work closely with the businesses.

Marvin also believes this is a great plan and that it will bring people back into older neighborhoods. This does a good thing for the University and the neighbors. He noted that the study suggests that blocks currently zoned R-4, R-5 and R-6, which are designated as ownership focus should be downzoned to R-2. He presumes that the Commission will probably be faced with the downzoning in the future.

Motion for approval, with amendment submitted today, carried 9-0: Krieser, Pearson, Carlson, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'. This is a recommendation to the City Council and the Lancaster County Board of Commissioners.

ITEM NOT ON THE AGENDA:

Rick Peo of City Law Department approached the Commission at this time and noted a request by the applicant for the Commission to reconsider their action deferring the Whitetail Run Community Unit Plan and Preliminary Plat on April 28, 2004. The Commission voted to defer action for a period of time until the build-through regulations are in place. In the past, he has always tried to advise that there is no procedure or authority for the Commission to put things on deferral. As long as the applicant doesn't object, it is acceptable; however, he does not believe that waiting for new legislation to be adopted is appropriate. That decision should be made by the final decision making authority (City Council or County Board). Peo requested that any member on the Commission that moved for deferral move for reconsideration and have this body move to rescind the deferral and set it for administrative action at the next meeting and forward a recommendation to the City Council and County Board.

Larson moved to rescind the previous action of deferral and to scheduled administrative action for May 26, 2004, seconded by Carroll.

Pearson thought there were other applications in this exact same boat. Do we know how many there are? Marvin Krout, Director of Planning, believes that there are at least five cases that the Planning Commission has placed on pending but he believes the applicant had agreed to that action. That is the key difference between those cases and this one. This is a good topic for discussion in two weeks when we talk about procedures. He acknowledges that the staff should not be recommending deferral without consulting with the applicant.

Motion carried 7-2: Krieser, Sunderman, Carroll, Taylor, Larson, Marvin and Bills-Strand voting 'yes'; Pearson and Carlson voting 'no'. The Whitetail Run Community Unit Plan and Preliminary Plat will be scheduled for administrative action on May 26, 2004. Public hearing was not reopened.

There being no further business, the meeting was adjourned at 4:45 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on May 26, 2004.

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